California Regional Water Quality Control Board
Santa Ana Region

RESOLUTION NO. R8-2006-0079

DIRECTING THE EXECUTIVE OFFICER TO DELEGATE CERTAIN AUTHORITIES TO AN INDEPENDENT HEARING OFFICER FOR THE PURPOSE OF CONSIDERING THE ISSUANCE OF INVESTIGATION AND/OR CLEANUP AND ABATEMENT ORDERS AND CONDUCTING HEARINGS AS NECESSARY IN THE RIALTO 160-ACRE SITE PERCHLORATE INVESTIGATON AND REMEDIATION

WHEREAS, THE REGIONAL BOARD FINDS:

1. Since 2002, the Regional Board Staff has been conducting an extensive investigation of perchlorate discharges in the Rialto, Colton and Fontana vicinity;

2. On February 28, 2005, the Regional Board Executive Officer issued a Cleanup and Abatement Order (CAO No. R8-2005-0053) naming Emhart Industries, Inc., and Black & Decker (U.S.), Inc., concerning perchlorate discharges at facilities located on a 160-acre site in Rialto ("Rialto 160-acre site") formerly operated by West Coast Loading Corporation, Goodrich Corporation and a number of pyrotechnics manufacturers. The Order was amended and reissued on December 2, 2005 but does not contain specific deadlines for investigative and remedial tasks. The amended order names Kwikset Locks, Inc., Emhart Industries, Inc., Kwikset Corporation, Black & Decker Inc. and Black & Decker (U.S.), Inc. (the "Emhart Entities");

3. A formal separation of functions has been established in this matter with Executive Officer Gerard Thibeault, Assistant Executive Officer Kurt Berchtold and Regional Board Counsel Jorge Leon, among others ("Advocacy Staff"), preparing to advocate that the Regional Board itself ratify the Amended Cleanup and Abatement Order and establish deadlines for investigative and remedial tasks;

4. The Emhart Entities filed petitions with the State Water Resources Control Board (State Water Board), objecting to a hearing before the Regional Board itself because of an alleged "bias" (State Water Board Case Nos. A-1732 through A-1732(d)) and requesting a hearing before the State Water Board;

5. The Regional Board and the Regional Board Advocacy Staff requested that the State Water Board take up the matter and conduct a hearing on the merits of the Amended Cleanup and Abatement Order, as requested by the Emhart Entities themselves (Thibeault letter of June 16, 2006, Attachment 1);

6. Upon initial refusal by the State Water Board to conduct the hearing, the Advocacy Staff requested that the State Water Board reconsider its decision (Thibeault letter of June 29, 2006, Attachment 2);

7. During the pendency of the petitions before the State Water Board, the Advocacy Staff investigated other options for holding a hearing in the matter of the Amended Cleanup and Abatement Order and has described those options to the State Water Board and the Emhart Entities (Thibeault letter of July 13, 2006, Attachment 3);

8. The Emhart Entities subsequently reversed the position taken in their petitions and advocated that the State Water Board not hold a hearing on the Amended Cleanup and Abatement Order. Moreover, they have asserted that none of the other options for a hearing described by the Advocacy Staff are acceptable and that they will not agree to any of the hearing options (Emhart Entities letter of August 2, 2006, Attachment 4);

9. The State Water Board on September 15, 2006 placed the Emhart Entities' petitions into abeyance (State Water Board letter of September 15, 2006, Attachment 5);

10. Inasmuch as Amended CAO No. R8-2005-0053 has not been revoked or rescinded by the Executive Officer or the Regional Board and the State Water Board will not act on the Emhart Entities petitions, the Order remains viable;

11. The Rialto Perchlorate Investigation and Remediation has been delayed and otherwise hindered by the lack of cleanup and abatement orders against the responsible parties;

12. It is in the best interest of the water purveyors, communities, and citizens affected by the perchlorate discharges that some resolution be achieved in assigning legal liability to the appropriate parties for the investigation and remediation of those discharges;

13. The Advocacy Staff has previously reported that, on the present state of evidence, it may propose issuing new orders to Goodrich Corporation and/or Pyro Spectaculars, Inc., or adding them to the current Emhart Entities order;

14. While adamantly and unequivocally denying that any of its members harbor any actual bias against any party in this matter, the Regional Board desires an expeditious resolution of the liability issues and a fair and impartial hearing process for those named and proposed to be named in cleanup and abatement orders;

15. Inasmuch as the Emhart Entities have challenged a hearing before the Regional Board and have refused to agree to a hearing by the Office of Administrative Hearings (Emhart Entities letter of August 2, 2006), and the State Water Board has declined to conduct the hearing, the Regional Board must consider remaining options for the conduct of any hearings that may be necessary in this matter;

16. The two options that remain available are: (a) appointment of a current Regional Board employee to act as an independent hearing officer in the place of the Executive Officer (who is precluded from so acting because of his advocacy role in this matter) and (b) appointment of an outside person to so serve;

17. The first option appears to be precluded by the provisions of Government Code Section 11400.30(a)(2);

18. The remaining option would allow the Regional Board to appoint a former state employee with experience in water quality issues to serve on a temporary basis for the limited purpose of considering any proposed investigation and/or cleanup and abatement orders in this matter;

19. The Executive Officer is authorized to conduct hearings and issue Investigation Orders and Cleanup and Abatement Orders (Water Code Sections 13223, 13267, 13304);

20. The Executive Officer is authorized to delegate his powers (Water Code Section 7);

21. The Regional Board is authorized to employ a retired annuitant on a limited term basis to perform defined tasks (Government Code Sections 19144, 21224);

22. Ted Cobb, a member of the Regional Board Advisory Staff, has conducted a survey of several former top level State Board and regional board employees and a former Deputy Attorney General to determine their availability;

23. Mr. Walt Pettit, who served as the State Water Board's Executive Director during the years 1990-2000, has expressed a willingness to serve as an independent hearing officer in place of the Executive Officer in this matter;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Executive Officer is hereby directed to delegate to Mr. Walt Pettit the authority to act as the Independent Hearing Officer for the purpose of conducting hearings and issuing investigation and cleanup and abatement orders relating to the perchlorate discharges at the Rialto 160-acre site, including, but not limited to, determining whether additional or amended cleanup and abatement orders proposed by the Advocacy Staff should issue in this matter;

2. Mr. Pettit is authorized to exercise all authorities in this matter that would normally be available to the Executive Officer including the authorities contained in Water Code Section 13223, 13267 and Section 13304;

3. Mr. Pettit will be assisted by technical and legal staff that he selects. Those staff must be chosen from among staff who have not served in an advocacy capacity in this matter;

4. During their assignment to assist Mr. Pettit, technical and legal staff will not be supervised by the Executive Officer, the Assistant Executive Officer, or the Advocacy Staff Counsel or any other member of the Advocacy Staff;

5. Mr. Pettit is hereby requested to convene a prehearing conference and issue an order setting forth a hearing schedule, requirements related to separation of staff functions, ex parte communications, public participation, designation of parties and any other matters he deems appropriate;

6. Mr. Pettit has the authority to issue any final investigation and cleanup and abatement orders that he deems appropriate;

7. Any investigation or cleanup and abatement orders issued by Mr. Pettit in this matter will be deemed final orders of the Regional Board and are subject to direct petition to the State Water Board pursuant to Water Code Section 13320;

8. In conducting the duties under this Resolution, Mr. Pettit shall not be subject to the authority, direction, or discretion of the Executive Officer or the members of this Regional Board;

9. The Executive Officer, the Assistant Executive Officer, and Counsel Jorge Leon, who is now with the State Water Board Office of Enforcement, are expected to continue to act in an advocacy capacity in this matter.

I, Gerard J. Thibeault, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Santa Ana Region, on October 13, 2006.

Gerard J. Thibeault
Executive Officer

ATTACHMENT 1

California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

June 16, 2006

Betsy Jennings
Senior Staff Counsel IV
SWRCB - OCC
1001 I Street
P.O. Box 100
Sacramento, CA 95812-100

RE: Updated Petitions Filed by Emhart Industries, Inc., et al., SWRCB File Nos. A-1732, A-1732(a), A-1732(b), A-1732(c), and A-1732(d)

Dear Ms. Jennings:

This constitutes the initial response of the Santa Ana Regional Water Quality Control Board (Regional Water Board) to the correspondence and updated petitions recently filed by Emhart Industries, Inc., Kwikset Locks, Inc., Kwikset Corporation, Black & Decker (U.S.), Inc. and Black & Decker Inc. (Petitioners or Emhart). The Regional Water Board has designated a Staff Advocacy Team and a Staff Advisory Team in this matter. Except as indicated otherwise below, this response is provided on behalf of the Staff Advocacy Team. We recognize (a) that the updated petitions have not been accepted by the State Water Resources Control Board (State Water Board) as being complete and (b) no schedule has been set for submittal of a response. However, we request that the State Water Board consider the proposal described below before acting on the petitions. We will submit a more detailed and complete response to the issues raised in the updated petitions if the State Board rejects this proposal.

Background

The Regional Water Board's Staff Advocacy Team has been engaged in an extensive investigation into the discharge of perchlorate at a 160-acre site in the City of Rialto (Rialto Perchlorate Investigation) since 2002. The Regional Water Board has issued many Water Code Section 13267 Investigation Orders and several Cleanup and Abatement Orders to numerous parties in order to identify responsible parties, conduct an investigation of the discharges, require remediation, and where appropriate, require replacement water.

As part of the ongoing investigation and remediation effort a Cleanup and Abatement Order (CAO) was issued to Petitioners. The original was issued February 28, 2005. It was amended on December 2, 2005. The Amended CAO, until very recently, was

scheduled to be heard before the Regional Water Board on July 17 and 18, 2006[1] in a first phase of a bifurcated proceeding. The Petitioners have denied that they are successors of West Coast Loading Company (WCLC), whom the Staff Advocacy Team believes to be a discharger of perchlorate at the site. Given that there is a need to consider a large volume of historical corporate documents, deposition testimony and complex legal argument, the Regional Water Board had determined to consider only the corporate successorship issues raised in the Amended CAO during the July two-day hearing. In the event the Regional Water Board were to find that the Petitioners are legal successors of WCLC, a second and final proceeding would have been scheduled to determine whether WCLC discharged wastes to the waters of the state. If successorship were not found, the second proceeding would be unnecessary. The City of Rialto, one of the public water suppliers affected by the perchlorate contamination, was designated as a Party to the proceeding.

Emhart has filed a petition and multiple associated documents in which they ask (a) that the July 17 and 18, 2006 successorship hearing before the Regional Water Board be stayed; (b) that the entirety of the Amended CAO be stayed; and (c) that the State Water Board conduct a hearing on the merits of the Amended CAO.

The Regional Water Board Staff Advocacy Team is prepared to vigorously defend against the procedural arguments and claims raised by Petitioners in the updated Petition. However, for the reasons described below, both the Staff Advocacy Team and the Regional Water Board itself[2] request that the State Water Board conduct a hearing on the merits of the Amended CAO and ask that it schedule the hearing at the earliest possible date.

Regional Water Board's Proposal

The Regional Water Board and its Staff Advocacy Team respectfully request that the State Water Board hold a hearing on the merits of the Amended CAO.

The Staff Advocacy Team asks that this be done at the State Water Board's earliest convenience for the following reasons. The issue of Petitioners' successorship and WCLC's participation in the perchlorate discharges has been under investigation for some four years. Previous orders have been issued to some of the Emhart-related corporations, only to be met with aggressive resistance. Thousands of citizens in the Rialto area are affected by the perchlorate discharges that may be attributable to Petitioners and others. While other identified dischargers (for example, the County of San Bernardino and Goodrich Corporation) have conducted extensive investigative

[1] The Regional Water Board has recently cancelled the hearing pending a decision by the State Water Board on the proposal contained in this letter.

[2] See a printed copy of an email from Ted Cobb dated June 14, 2006 attached, conveying support for this request from the Vice Chair of the Board.

work, provided remediation and provided for replacement water, Petitioners have only offered to conduct limited investigation work, no remediation, and have refused to consider providing for replacement water, even on an interim basis.

Petitioners have instead established a record of withholding requested corporate records, refusing to cooperate and creating delay in the Regional Water Board's efforts to determine Petitioners' liability for the perchlorate contamination. We believe that granting Petitioners' own request to hold a hearing before the State Water Board on the merits of the Amended CAO will go a long way toward resolving the merits of this matter in the most expeditious manner. For one, it will bypass Petitioners' ill-founded allegations of bias of the Regional Water Board as well as the petition for review and petition for writ of mandate that we fully expect Emhart would file on procedural grounds. Additionally, scarce State Water Board and Regional Water Board resources and time can be conserved by allowing the Staff Advocacy Team as currently composed to present the case against Petitioners. This is not currently an option given Petitioners' newly found objection to the composition of the advocacy team, given the *Quintero* decision.[3]

We recognize that the State Water Board may be reluctant to essentially take over the hearing in this case for fear that it may establish an undesirable precedent. However, we believe that this case stands as a unique example in which extraordinary procedural means are warranted. As noted, the Regional Water Board's investigation has been in progress for more than four years. The Cities of Rialto and Colton and other dischargers have spent substantial resources in conducting their own investigation into Petitioners' liability and have provided much valuable information and documentation to assist the Regional Water Board's decision. The Petitioners have also spent substantial resources resisting the efforts of the Cities, other dischargers, and the Regional Water Board's Staff Advocacy Team, despite the existence of persuasive evidence that suggests that Petitioners are the legal successors of WCLC and that the latter discharged significant quantities of perchlorate at the 160-acre site.

Petitioners have already challenged a related proceeding up to the California Supreme Court.[4] They make no secret of the fact that they will take every opportunity to raise procedural challenges to any Regional Water Board action. The very Petition that Petitioners have filed is yet another example of a last-minute procedural roadblock erected in hopes of forestalling the ultimate decision against Petitioners. In effect, by dragging the process out so long, Petitioners have "created" process issues that they now seek to use to their benefit. These delay tactics should not be permitted to occur. An expedited hearing before the State Water Board will help to prevent unwarranted delay.

[3] *Quintero v. City of Santa Ana et al.* (2003) 114 Cal.App.4th 810

[4] Unpublished Decision in Kwikset Corporation v. Santa Ana Regional Water Resources Control Board (review denied by California Supreme Court, October 26, 2005)

Petitioners have relied heavily in their Petition on the holding of the *Quintero* and related court decisions. The law on the subject, however, remains unsettled relative to the issues regarding bias and involvement of non-attorneys. A decision by the State Water Board on the merits of the Amended CAO would avoid any chance that the State Water Board itself or a court could find that the process—if the CAO hearing were conducted before the Regional Water Board—was flawed. This could lead to a remand and the need to start all over again, once more wasting scarce valuable resources by all parties.

Under the Staff Advocacy Team's proposal, the State Water Board's staff would not bear the burden of presenting the Amended CAO case before the State Water Board. Instead, the Regional Water Board's Staff Advocacy Team would handle all duties associated with briefing, presenting evidence and argument. The Petitioners would not be prejudiced in any way since they can present their case against the Amended CAO before the State Water Board, as they have in fact requested to do.

Conclusion

The Regional Water Board asks that the portion of the Petition requesting a hearing on the merits before the State Water Board be granted. The hearing can be conducted before the full Board, a panel or a single Board Member acting as a hearing officer. Such a hearing would greatly improve the probability that the Amended CAO, the outcome of which affects many citizens in Southern California, can reach resolution in a reasonable time and without further rewarding Petitioners' prolonged dilatory tactics.

The Regional Water Board and the Staff Advocacy Team appreciate your consideration of this request.

Sincerely,

for Gerard J. Thibeault
Executive Officer

Attachment: Email from Ted Cobb dated June 14, 2006

cc: Tam Doduc, Chair, SWRCB
Celeste Cantú, Executive Director, SWRCB
Karen O'Haire, Senior Staff Counsel
Regional Water Board
Scott Sommer, Counsel for Rialto
Christian Carrigan, Counsel for Rialto
James Meeder, Counsel for Petitioners
Robert Wyatt, Counsel for Petitioners
Interested Parties (see attached list)

ATTACHMENT 2

California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

June 29, 2006

Celeste Cantú, Executive Director
Michael Lauffer, Chief Counsel
State Water Resources Control Board
1001 I Street
P.O. Box 100
Sacramento, CA 95812-100

RE: Updated Petitions Filed by Emhart Industries, Inc., et al., SWRCB File Nos. A-1732, A-1732(a), A-1732(b), A-1732(c), and A-1732(d)

Dear Ms. Cantú and Mr. Lauffer:

The Advocacy Team of the California Regional Water Quality Control Board, Santa Ana Region, is in receipt of a letter dated June 28, 2006 from Karen O'Haire, Senior Staff Counsel, indicating that the Executive Director has denied the Advocacy Team's and the Regional Water Board's request that the State Board conduct a hearing on the merits of the Amended Cleanup and Abatement Order in this matter.

The Advocacy Team submits this letter requesting that the decision of the Executive Director be reconsidered in light of significant, possibly determinative information that may not have come to the direct attention of the Executive Director in making her decision. We are concerned that this is the case since the letter denying the request was issued only shortly after an email from the Advocacy staff of the same date was sent to the Office of Chief Counsel regarding this matter.

The email clarifies that (a) the Advocacy Team commits to a much shorter hearing schedule than is suggested by Emhart et al's letter of June 23, 2006 and (b) because Emhart Industries, Inc. has dissolved as a corporation, the Regional Board's legal options to pursue Emhart's liability in this case are more limited than would appear to be the case. In effect, the dissolution possibly bars the initiation of any other proceeding. A copy of the email is included with this letter and explains these two points.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosure

From: Jorge Leon
To: Betsy Jennings; Karen O'Haire; Lauffer, Michael
Date: 6/28/2006 11:36:36 AM
Subject: Emhart Industries, Inc. et al, A-1732

The Advocacy Team responds briefly to Emhart Industries, Inc.'s letter of June 23, 2006.

Emhart, et al raise as an "affirmative defense" on page 8 that, "[a]s regards Petitioner Emhart Industries, Inc., the Executive Officer failed to comply with the claims requirement of the Connecticut Business Corporations Act sections 33-887." It is important to add context to this false assertion, as it may bear on the State Board's consideration of the Regional Board/Advocacy Team's request that it hear the merits of the Cleanup and Abatement Order.

Sometime after the Regional Board Executive Officer issued a Water Code Section 13267 letter dated October 23, 2002 to Emhart Industries, Inc., (then a Connecticut corporation), Emhart revealed for the first time that--months before--it had filed for dissolution in that state. Since the filing, Emhart Industries, Inc. has transferred all its assets (some $716 Million) to its parent, Black & Decker, Inc.

Under CBCA section 33-887, a claim against a dissolving corporation must be filed no more than three years from notice of filing for dissolution. That deadline was March 12, 2005. The Connecticut statute provides that a proper claim requires the commencement of a proceeding to enforce the claim. Having determined that an administrative action qualifies, the Regional Board complied with the statute by issuing a Cleanup and Abatement Order (No. R8-2005-0053) to Emhart Industries on February 28, 2005. The Connecticut statutes provide that a properly filed claim against a dissolved corporation is valid up to the value of the transferred stock. It was essential to preserve the Regional Board's claim against those transferred funds to commence the proceeding by the March, 2005 deadline.

To the extent that the State Board may consider that other avenues may be available to the Regional Board to pursue its action against Emhart, the Advocacy Team wishes to alert the State Board that there is a substantial legal question whether the commencement of some other action, such as initiating a court proceeding at a date beyond the March, 2005 deadline, would qualify as a properly filed claim under the Connecticut statutes. We are currently researching the issue and will provide the results as soon as they are available.

On another important aspect of this matter, we note that Emhart has pointed out in its letter (footnote 2) that the Advocacy Team intends to call some 58 witnesses and submit over 100,000 documents into evidence at the hearing in this matter. The Advocacy Team presented that information to Emhart, et al. out of an abundance of caution. In the event that the State Board agrees to hear the merits of the Cleanup and Abatement Order, the Advocacy Team commits to make a concise presentation, not to exceed one full day of argument and submittal of evidence, and will seek to submit a small fraction of the 100,000 documents.

If you have any questions or concerns, please let me know.

Jorge A. Leon
Senior Staff Counsel
SWRCB - OCC
1001 I St., Sacramento, CA 95814
(916) 341-5180; fax: 341-5199
jleon@waterboards.ca.gov

CC: Berchtold, Kurt; ccarrigan@mmblaw.com; d.g.sakai@bbklaw.com; Dintzer, Jeffrey D.; Holub, Robert; jmeeder@allenmatkins.com; julie.macedo@pillsburylaw.com; Pduchesneau@manatt.com; Philip Wyels; rwyatt@allenmatkins.com; s.elie@mpglaw.com;

scott.sommer@pillsburylaw.com; Tanaka, Gene; Thibeault, Gerard

ATTACHMENT 3

California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

July 13, 2006

Celeste Cantú, Executive Director
Michael Lauffer, Chief Counsel
State Water Resources Control Board
1001 I Street
P. O. Box 100
Sacramento, CA 95812-100

RE: Updated Petitions filed by Emhart Industries, Inc. et al., SWRCB File Nos. A-1732, A-1732(a), A-1732(b), A-1732(c), and A-1732(d)

Dear Ms. Cantú and Mr. Lauffer:

The Advocacy Staff submitted a letter dated June 29, 2006 asking that the State Board reconsider its decision denying a request that the State Board conduct a hearing on the merits of the Amended CAO. As indicated in that letter, we have conducted additional research concerning the legal impact of Emhart Industries, Inc.'s dissolution. Additionally, we have researched alternative means of providing a hearing on the Amended CAO to Emhart, et al. This letter reports the results of that research.

1. Dissolution

The Advocacy Staff has considered an alternative of initiating a lawsuit against Emhart, et al. on a theory of nuisance to be filed in superior court instead of pursuing the current Amended CAO.[1] However, that approach creates a serious legal risk. The risk is that the action may be barred because Emhart Industries, Inc. filed for dissolution in 2002 and the time for commencement of a proceeding against the dissolved corporation lapsed in 2005.

Emhart Industries, Inc. was incorporated in the State of Connecticut. In February 2002, it filed a Certificate of Dissolution with the Connecticut Secretary of State, and published notice of the dissolution on March 12, 2002. Generally, a corporation ceases to exist once it is dissolved. The corporation may no longer carry on any business except to wind up and liquidate its affairs. However, most states, including Connecticut, have enacted statutes that have the effect of permitting the corporation to sue and be sued for a defined period of time after notice to creditors of the dissolution. These are referred to as "corporate continuance" or "survival" statutes. In the case of Connecticut,

[1] The Advocacy Staff has also considered enforcing the Amended CAO in court. However, this does not appear to be an available option at this time since the Amended CAO does not contain specific deadlines with which the discharger has failed to comply—a prerequisite under Water Code Section 13304.

that period is three years. (Connecticut General Statutes Annotated, Section 33-887.) A claimant must "commence a proceeding" against the dissolved corporation within three years of the publication date. If not, the corporation is generally considered to have lost its capacity to be sued and the claim is considered untimely. 19 Am Jur 2d, Section 2435. The Regional Board complied with the requirement by issuing its Cleanup and Abatement Order to Emhart, et al. on February 28, 2005 (later amended on December 2, 2005) and providing notice to Emhart. An administrative proceeding has been found to comply with the requirement to commence a proceeding. *Reveille Tool & Supply, Inc. v. The State of Texas* (1988) 756 S.W.2d 102.

If the Regional Board were to abandon the Amended CAO and move on to initate a lawsuit for nuisance, there is no certainty that the later lawsuit would be permitted to go forward. There is a real possibility that the lawsuit would be barred for failure to file within the three-year period. The Connecticut statutes and court decisions do not answer the question whether a claimant can abandon one proceeding and move onto another. Research of the issue in the decisions of courts of other states has not yielded promising results. The New Hampshire Supreme Court has held that the initiation of a state action after expiration of the three-year corporate continuation period, following dismissal (not on the merits) of a previously-filed federal court action was barred as being filed too late, even though it was virtually the identical suit. *MBC, INC. Engel et al.* (1979) 397 A.2d 636.

While there may be equitable arguments to be made supporting the late initiation of a lawsuit against Emhart which carries forth essentially identical allegations, there appears to be no statutory and insufficient decisional support to assure that the Regional Board's claim would be protected against Emhart's dissolution. The Regional Board would not, for this reason, want to abandon its Amended CAO on the hope that a future court would find its lawsuit to be timely-filed against Emhart under the Connecticut statutes.

2. Office of Administrative Hearings

The Advocacy Staff has also looked into the question of whether the Amended CAO can be heard in front of an Administrative Law Judge within the Office of Administrative Hearings. This appears to be a viable option. An interagency agreement would need to be prepared to compensate OAH for its services. An ALJ would be assigned to hear the case and issue a proposed decision. The Advocacy Staff would be one of the parties and the ALJ would handle all matters, including prehearing motions, evidentiary issues, etc. The referring agency would then review the proposed decision and determine whether to adopt, modify or remand the proposed decision.

A necessary element for referral to the OAH is Emhart, et al.'s consent. The matter could not be unilaterally referred to OAH. The Advocacy Staff requests that if the State

Board is not inclined to hear the matter pursuant to our request for reconsideration, that it seek Emhart's consent and make the referral of the Amended CAO directly to OAH. Under this scenario, the proposed decision of the ALJ would be submitted back to the State Board, bypassing the Regional Board entirely. The parties would be bound by the outcome; however, Emhart's ability to seek court review of the State Board's decision under Water Code Section 13330 would be preserved. This procedure should resolve Emhart et al.'s unmeritorious request for disqualification of the Regional Board and save unnecessary delay.

3. Delegation of hearing function to current Regional Board staff

Another option that the Advocacy Staff has considered is to ask the Regional Board to delegate the hearing function to current Regional Board staff other than members of the current Advocacy Team. The presiding officer function could be delegated to any deputy of the Regional Board, pursuant to Water Code sections 7 and 13223. This is also permitted under *Petition of BKK, Order No. WQ 86-13* and the Court's decision in *Machado v. SWRCB,* 90 Cal.App 4th 720, 109 CalRptr2d 116 (2001). Unfortunately, however, it appears that Government Code Section 11400.30 precludes this option. It provides that, "(a) A person may not serve as a presiding officer in an adjudicative proceeding in any of the following circumstances: ... (2) The person is subject to the authority, direction, or discretion of a person who has served as investigator, prosecutor, or advocate in the proceeding or its preadjudicative stage." This provision would prevent utilizing the services of any current Regional Board staff because they are all supervised by the Executive Officer, who has acted as an advocate in this matter.

4. Delegation to new Regional Board staff

Yet another option is for the Regional Board to appoint a retired annuitant or make a limited term appointment to any individual that is not currently a member of the RB staff to act as presiding officer for this matter. The Regional Board would probably not be able to use a temporary assignment or loaned employee from another agency, including the State Board or other regional boards, since those employees would not be considered to be deputies of the Regional Board pursuant to Title 2 CCR, Section 426(c). In addition, we would have to ensure that any retired annuitant or limited term appointment did not report to the Executive Officer, and that the Regional Board itself have no input or control over the decision-making process of the presiding officer.

5. Steering Committee

Finally, the Advocacy Staff wishes to advise the State Board that it and the Regional Board have explored the "Steering Committee" option in this matter to no avail. Under the Steering Committee approach, the several identified potentially responsible parties

would arrange an agreement among themselves to conduct an investigation and cleanup. At some stage and pursuant to their agreement, once the liability has been apportioned among the parties, any reimbursements in expenditures are made between them as appropriate.

This approach has come up for serious discussion on two occasions since 2002 regarding the Rialto Perchlorate Investigation. First, in 2003, Goodrich Corporation sought to enlist the cooperation of the various parties, including former and current fireworks manufacturers and Emhart's related corporations named in the Amended CAO. However, that effort did not bear fruit. Again, in early 2006, Emhart, et al. approached the Regional Board with a proposal to take the Amended CAO off calendar in favor of allowing the parties to consider the Steering Committee approach. Emhart's proposal was not accepted by the Regional Board because it failed to provide for all necessary components, including the provision for replacement water, as had been specifically and explicitly requested of them. Although the drinking water supply of Rialto and neighboring communities is of high quality, that is true because the City of Rialto and other water purveyors have paid to equip affected wells with treatment systems. It is inappropriate for ratepayers to continue to bear this burden while additional investigation is conducted under a Steering Committee approach, which is what Emhart, et al.'s proposal would have required.

CONCLUSION

The Advocacy Staff renews its request that the State Board consider holding a hearing (possibly before a single hearing officer) on the merits of the Amended CAO. That is clearly the most direct, cost effective and efficient way—in light of Emhart et al's continuing dilatory tactics, including its effort to disqualify the Regional Board—to achieve a decision on the merits in this matter. As stated in our letter of June 29, 2006, the Advocacy Staff commits to spending no more than a full day presenting the evidence, including witnesses and documents supporting the Amended CAO. Alternatively, the Advocacy Staff requests that the State Board consider referral of the Amended CAO to the OAH for hearing, and that it retain authority to review the ALJ's proposed decision. This option would cost more and require Emhart et al's consent, but would provide a hearing to Emhart, et al. in a relatively efficient manner. Failing either of these two options, the Regional Board Advocacy Staff would consider as its next best option arranging for a hearing before a neutral retired annuitant or limited term appointment acting as a Presiding Officer.

Your consideration of these requests is appreciated.

Sincerely,

Gerard J. Thibeault
Executive Officer
Santa Ana Regional Water Quality Control Board

cc (via email only):

Jorge Leon
Phil Wyels
Karen O'Haire
Ted Cobb
Robert Wyatt
Jim Meeder
Scott Sommer
Cris Carrigan
Julie Macedo
Gene Tanaka
Danielle Sakai
Steve Elie
Jeffrey Dintzer
Pete Duchesneau

ATTACHMENT 4

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
Three Embarcadero Center, 12th Floor | San Francisco, CA 94111-4074
Telephone: 415.837.1515 | Facsimile: 415.837.1516
www.allenmatkins.com

Robert D. Wyatt
E-mail: rwyatt@allenmatkins.com
Direct Dial: 415.273.7420 File Number: E2602-005/SF684247.01

Via Electronic Mail and
First Class Mail

August 2, 2006

Ms. Celeste Cantú, Executive Director
Michael Lauffer, Chief Counsel
State Water Resources Control Board
P. O. Box 100
Sacramento, CA 95812

Re: Preliminary Response to Letter from Karen O'Haire, SWRCB, OCC, dated July 14, 2006; and

Response to Letter from Gerald J. Thibeault, Executive Officer, Santa Ana RWQCB Dated July 13, 2006,

Concerning *Emhart Industries, Inc., et al. v. Regional Water Quality Control Board, Santa Ana Region at al.*, SWRCB/OCC File Nos. A-1732, A-1732(a), A-1732(b), A-1732(c), and A-1732(d)

Dear Ms. Cantú and Mr. Lauffer:

This letter preliminarily responds to the letter written by Karen O'Haire, Senior Staff Counsel in the Office of Chief Counsel, State Water Resources Control Board ("State Water Board") dated July 14, 2006, on behalf of Petitioners Emhart Industries, Inc., Kwikset Locks, Inc., Kwikset Corporation, Black & Decker (U.S.) Inc., and Black & Decker Inc. ("Petitioners"). It also responds to the letter written by Gerald J. Thibeault, Executive Officer of the Santa Ana Regional Water Quality Control Board ("Regional Board" or "Board") dated July 13, 2006. It is directed to the State Water Board, sitting in its adjudicatory capacity in connection with the above referenced matter.

I. Petitioners' Preliminary Response to Ms. O'Haire's July 14th Letter

A. Petitioners Are Not Now Aggrieved By The 2005 CAO

On February 28, 2005, the Regional Board's Executive Officer, Gerald Thibeault, issued Cleanup and Abatement Order R8-2005-0053 ("2005 CAO"), which did not require Petitioners to

do anything. As its transmittal letter explained: "Note that the Order does not include specific deadlines at this point; rather, the first deadline will be set by future action of the Board. A detailed hearing notice will be issued at a later date." (Ex. 26, at 1.)[1] On October 17, 2005, the Regional Board, without any request by Petitioners, noticed an adjudicatory hearing on the 2005 CAO for May 2006. (Ex. 1.) As subsequently amended on December 2, 2005, the amended 2005 CAO reaffirmed that Petitioners' obligations under the order were conditioned on further Regional Board action following its adjudication of the allegations in the 2005 CAO made by its Executive Officer: "1. By 60 days from the date the Regional Board affirms this Order, submit a work plan and schedule to define the lateral and vertical extent of the perchlorate and VOCs in the soil and groundwater. . . ." (Ex. 27, at 10.)

As the State Board is aware, in direct response to Petitioners' request that the Regional Board be disqualified from adjudicating the allegations in the 2005 CAO because of the appearance of bias, if not actual bias, against Petitioners, on June 14, 2006, the Board announced its decision to cancel its adjudicatory hearing. Thereafter, on June 28, 2006, Karen O'Haire, the attorney in the Office of Chief Counsel of the State Water Board to whom this matter has been assigned, advised Petitioners that their request for an immediate stay of the Regional Board's adjudicatory proceedings was "premature because there is no Santa Ana Water Board proceeding scheduled." (Emphasis added.) Ms. O'Haire explained that the requested stay was rendered moot when the Regional Board advised that it had cancelled the hearing on the 2005 CAO and thus the "Executive Director of the State Water Board declines to hold a hearing on the merits of the amended CAO at this time." She also advised that:

> The Santa Ana Water Board or the Staff Advocacy Team may determine from the various statutory options how to proceed. If such a decision is subject to review pursuant to Water Code 13320, the State Water Board will conduct a review based on a timely and complete petition for review. Alternatively, pursuant to Water Code section 13320, the State Water Board may take subsequent action on its own motion.

Since this decision, neither the Regional Board nor the Advocacy Team have taken further action on the 2005 CAO other than the Advocacy Team's June 29, 2006 request that the State Board reconsider its decision to decline to hold a hearing on the merits of the 2005 CAO at this time. Nor has the State Water Board taken any action on its own motion.

Thus, at this time, and in light of the Regional Board's cancellation of its hearing on the 2005 CAO, which does not on its face require Petitioners to do anything before the Regional Board adjudicates the allegations in the 2005 CAO, Petitioners are no longer aggrieved within the meaning of 23 CCR Section 2050(a)(5) because the 2005 CAO requires no action. Of course, were the Regional Board to reverse its present course and attempt to adjudicate the allegations in the 2005

---

[1] All references to "Ex. __" are to the exhibits submitted with Petitioners' Amended Petition.

CAO, or take some other adverse action, Petitioners would be aggrieved for all the reasons set forth in their Amended Joint Petition for Review-Part B (Supporting Papers) dated May 26, 2006, as amended on June 2 and 23, 2006.

Accordingly, Petitioners request that their amended petitions be held in abeyance pending further action by the Regional Board as set forth in Ms. O'Haire's June 28th letter.

B. The State Board Need Not Now Act On The 2005 CAO

The facts in the administrative record below establish that, contrary to the repeated assertions of the Regional Board's Staff ("Advocacy Team"), there is also no need for the State Water Board to undertake on its own motion the adjudication of the allegations against Petitioners in the 2005 CAO made by the Regional Board's Executive Officer. Nor, as is discussed below in a separate section, is there any need for the State Water Board to adopt any of the *ad hoc* adjudicatory "schemes" suggested by the Advocacy Team in its July 13th correspondence.

The facts in the administrative record which compel the conclusion that there is no need for the State Water Board to now act on the 2005 CAO are set forth in detail in Petitioners' Amended Joint Petition for Review-Part B (Supporting Papers), at 42-46.

Simply stated, the threshold technical investigation of the 160-acre site sought by the 2005 CAO is now being voluntarily performed by Emhart, and will not be completed until the Fall of 2006. (Ex. 49.) That work was to "submit a work plan and time schedule to define the lateral and vertical extent of the perchlorate and VOCs in the soil and groundwater at the 160-acre site and then implement the work plan under the schedule approved by the Executive Officer". (Ex. 4, at 4.) On February 10, 2006, Emhart's voluntary work plan was accepted by Board staff, and, at the March 3, 2006, and April 21, 2006, Regional Board meetings, Mr. Berchtold, the Board's Assistant Executive Officer, confirmed that it satisfies the first item in the 2005 CAO. (Ex. 3, at 31; and Ex. 42, at 44, 51 and 52.)

On April 21, 2006, the Regional Board's technical staff acknowledged that this work, being voluntarily conducted at a cost to Emhart of more than $2 million, was proceeding as scheduled and that Emhart has been responsive and cooperative. As Mr. Holub of the Regional Board staff publicly explained to the Regional Board:

> In February of 2006 Emhart and Pyro Spectacular submitted a joint investigation work plan. And in that work plan Emhart proposed to perform over a hundred shallow soil samples from 53 locations at the 160-acre site. Almost 300 [additional] shallow soil samples from 52 locations from the excavation of trenches and soil borings. . . . And Emhart was also going to install two groundwater monitoring wells

> at the site. And those wells are going to be installed after the soil gas sampling was done and after Pyro Spectacular installed the three groundwater monitoring wells that they were going to install in accordance with the work plan.
>
> * * *
>
> Emhart began work on March 13th. All of the soil gas sampling has been completed. And most of the shallow soil sampling has been completed.
>
> * * *
>
> The cooperation and interaction we've had with Goodrich, Emhart, and Pyro's consultants and the drilling contractors out in the field this past six weeks has just been outstanding. They have been very cooperative, very receptive to recommendations from our staff. . . . And in . . . the case of Emhart, they've actually done more work out there than was proposed in the work plan. There were several other areas of interest that came up as work was going on out there. And we suggested they go dig in another area. And they were very receptive in just moving the equipment over and digging trenches in other areas and grabbing samples. So we have been very pleased. . . .

(Ex. 42, at 44, 51 and 52.)

Mr. Holub also confirmed that completion of this investigative work by Emhart is a necessary prerequisite to any determination regarding the scope of the problem on the 160-acre site as a potential source of perchlorate and TCE, what's "going on out there," and who is responsible:

> [A]ll the soil gas samples and all the soil samples that we received analytical results for [TCE] have all been non-detect. So no TCE has been detected in the shallow soil. And most of the soil samples that we received analytical results for perchlorate were non-detect.
>
> * * *
>
> So when all this data comes in, and we can look at it comprehensively, we will be in a better position to make some type of conclusions or determination about what's going on out there.
>
> * * *

> And what we are doing with the work that's going on there now [on the 160 Acre Site] is trying to find out exactly where those higher concentrations of Perchlorate are in the soil and groundwater so that the responsible parties will be able to come up with a plan to clean up or contain those contaminate[d] areas at the 160-acre site. . . . And that has been the plan all along.

(*Id.*, at 44, 47 and 49.) These Advocacy Team admissions that site investigation is a necessary prerequisite to the Regional Board's liability determinations regarding all potential dischargers is consistent with the November 8, 2004 ruling of the Riverside County Superior Court, which the Regional Board did not appeal. There, the Court held in the ongoing perchlorate proceedings before the Regional Board that, given that there was no immediate threat to the public health, due process precluded the Board from ordering any investigation work by a particular party "absent a finding of a current or past discharge on a Preponderance of Evidence standard," a ruling the Advocacy Team apparently would have the State Water Board ignore. (Ex. 21, at 3.)

In short, contrary to the Advocacy Team's assertions to the State Water Board, the facts in the administrative record below establish that the State Water Board acted correctly when it declined to hold a hearing on the merits of the 2005 CAO at this time and that such a proceeding before the end of 2006 would at best be premature. As written, the 2005 CAO does not require Petitioners to take any action until after the allegations made by the Board's Executive Officer are adjudicated by the Regional Board. The Regional Board has cancelled its adjudicatory hearing and taken no further action. Thus, Petitioners are not now aggrieved.

Upon the completion of the pending remedial investigation of the 160-acre site, Petitioners assume that the Regional Board's staff will determine: (1) whether there is a need to remediate the 160-acre site; (2) whether it is necessary to proceed with a feasibility study, which itself will take time; and (3) thereafter whether there is sufficient extrinsic evidence to require one or more of the alleged dischargers to undertake the preparation and implementation of a final remedial action plan. We further assume that only then will staff determine whether there is sufficient evidence to support the allegations in the 2005 CAO that Emhart's asserted corporate predecessor, the West Coast Loading Corporation ("WCLC"), released or discharged perchlorate and/or TCE which has impacted the groundwater adversely in the Rialto/Colton Groundwater Basin.

No suspected discharger has yet refused to undertake any additional follow-on investigative work or to conduct a feasibility study with regard to the 160-acre site because no such request has been made. Until such time that the soil and groundwater investigation is completed and one or more of the many suspected dischargers refuses to act, any further action by the Regional Board and/or the State Water Board in this matter would be both premature and unnecessary.

II. Petitioners' Response to The Advocacy Team's July 13th Letter

A. The Advocacy Team's *Ad Hoc* Hearing Alternatives Are Unnecessary, Not Supported by the Law, and Overlook the Fact That the Allegations Against Emhart in the 2005 CAO Are Being Litigated in Federal Court

For reasons known only to the Advocacy Team, rather than proceed in an orderly fashion and await the completion of the remedial investigation of the 160-acre site and the corresponding development of necessary extrinsic evidence, it now urges the State Water Board to adopt one of several suggested *ad hoc* hearing procedures, none of which has a valid legal basis, and to rush into a potentially unnecessary and complex adjudicatory hearing.

First, the Advocacy Team announces that, having slept on its rights, it is not in a position to file a civil action against Emhart because such an action might be time barred and thus it must now prosecute the 2005 CAO before the State Water Board: "There is a real possibility that the lawsuit would be barred for failure to file within the three-year period." (7/13/06 Letter, at 2.) But, the very issue the Advocacy Team now seeks to litigate before the State Water Board under the 2005 CAO already is pending and will be resolved in two federal civil actions filed by the City of Rialto (in January 2004) and the City of Colton (in February 2005) against Emhart and numerous other suspected dischargers. Those actions are entitled *City of Colton v. American Promotional Events, Inc.-West, et al.* USDC Case No. CV 05-01479 JFW (SSx) and *City of Rialto* v. *United States Department of Defense, et al.*. USDC Case No. CV 04-00079 VAP (SSx). Discovery in both actions on the factual and legal issues framed against Petitioners in the 2005 CAO, which is the source of the Advocacy Team's alleged evidence against Petitioners as selectively fed to it by parties adverse to Petitioners, is ongoing and should be completed in 2006.

Not only has the Advocacy Team failed to advise the State Water Board that the allegations in the 2005 CAO which it seeks to adjudicate under one of its *ad hoc* schemes will be resolved in federal court, but it also has failed to explain why one or more of those schemes would be a more appropriate forum for resolution of those issues than our federal courts, unless it perceives some improper advantage by avoiding the neutral forums and evidentiary and procedural safeguards provided by our federal courts. Nor, as noted above, has the Advocacy Team explained why the State Water Board's decision to deny its request for a hearing on the 2005 CAO at this time is prejudicial, given that the investigation of the 160-acre site has not been completed and no determination has been made that there was a release from WCLC's historical operations at that site that needs remediation. In short, the asserted need for the State Water Board to adopt one of the Advocacy Team's suggested *ad hoc* advisory schemes and rush to a hearing is a contrivance.

Second, with regard to the Advocacy Team's *ad hoc* suggestion that the matter be heard by an administrative law judge from the Office of Administrative Hearings, the Advocacy Team correctly states that such a procedure requires the agreement of all parties. Petitioners will not agree

to commence a third action to address the very issues that are now being litigated in two separate federal court actions. Moreover, there is no precedent for such a procedure involving cleanup and abatement orders, and thus to proceed as suggested would generate its own set of procedural and administrative conundrums which would only compound an already overly tangled process.

Third, with regard to the Advocacy Team's *ad hoc* suggestions that the adjudication of the allegations in the 2005 CAO be delegated to current or new Regional Board staff, the Advocacy Team concedes that such a process is precluded by state statute. Petitioners agree and add that such a procedure would also be precluded by due process for all the reasons set forth in Petitioners' Amended Joint Petition-Part B (Supporting Papers). Moreover, contrary to the Advocacy Team's bald assertion, neither *BKK, Order No. WQ 86-13* nor *Machado v. SWRCB* (2001) 90 Cal.App.4th 720 address, let alone "permit," delegation by the Regional Board of its adjudicatory functions to its staff. (7/13/06 Letter, at 3.)

Finally, the Advocacy Team's explanation for its failure to initiate a steering committee process, like that regularly undertaken by the U.S. EPA, is contrived and disingenuous. The notion that staff's "efforts" to implement such a process failed because Emhart declined to provide "replacement water" before its or anyone else's liability was determined is nonsensical. The steering committee process begins with a site investigation, then, if necessary, moves to a feasibility study and the development of a remedial action plan. During that process the extrinsic factual basis for allocation of responsibility among all potentially responsible parties is developed and more often than not resolved either by agreement or focused litigation. Such a process, which the Regional Board has never pursued, results in the performance of the ultimate remedy by those responsible, which may or may not include the need for "replacement water."[2] The contrived nature of the Advocacy Team's explanation for not pursuing the steering committee process is only confirmed by its concession that there is no health issue that needs immediate attention: "the drinking water supply of Rialto and neighboring communities is of high quality. . . ." (7/13/06 Letter, at 4.) In other words, there is no present need for replacement water. Moreover, the questions of whether and which suspected dischargers should pay for the costs incurred by Rialto and Colton to pump and treat groundwater will be resolved and allocated among all responsible parties in the pending federal lawsuits.

---

[2] Petitioners note that Waster Code § 13304(f) requires that an applicable "standard" be in place for replacement water orders and that no such federal or state standard presently exists for perchlorate.

B. The Advocacy Team's Representations Regarding the Scope Of And Necessity For A State Board Adjudicatory Hearing Are Incomplete And Inaccurate

In its July 13th letter, ignoring Regional Board staff's own admissions that no factual conclusions regarding the 160-acre site can be made until after the soil and groundwater investigation is completed later this year, the Advocacy Team renews its request for an immediate hearing before the State Board (now "possibly before a single hearing officer") and "commits to spending no more than a full day presenting the evidence, including witnesses and documents supporting the Amended CAO." (7/13/06 Letter, at 4.) It is unclear, however, whether this "commitment" is to adjudicate in one day the non-dispositive and potentially unnecessary issue of whether Petitioners are the corporate successors of WCLC, which allegedly released perchlorate to the groundwater during its operations on a portion of the 160-acre site between 1952 and 1957. As Mr. Cobb (the Board's legal adviser) explained publicly to the Regional Board on March 3, 2006:

> We consciously divided the case into two component parts. . . . And the July hearing is only to determine who, in fact, is properly named, not whether or not they have direct responsibility. We assumed that would be done in November or October or someplace like that. We haven't set that date yet, so [Emhart] is quite accurate on that.

(Ex. 3, at 79-80.)

In connection with the Advocacy Team's request for an immediate adjudication of the 2005 CAO by the State Water Board, it also has failed: (1) to explain how a dispositive hearing could now be held when the extrinsic evidence regarding both the discharge of perchlorate and the need for any remediation at the 160 acre site allegedly caused by WCLC and others has not yet been gathered; (2) to identify the evidence they intend to submit to support the allegations that WCLC released perchlorate or TCE to the groundwater in the Rialto/Colton Groundwater Basin and explain how much time this yet-to-be developed and identified evidence will take to present and be considered; (3) to explain how the 58 witnesses and 114,000 pages of documents (its asserted evidence on the corporate successor issue alone) regarding five distinct corporations (two of them dissolved) could be presented and considered by the State Water Board in "a single day" and whether that time frame includes the presentation of the City of Rialto; and (4) to explain how much time the five-named Petitioners will need to cross-examine the Advocacy Team's and the City of Rialto's evidence and to affirmatively establish their defense on both the corporate successor and discharge issues.

In short, the State Water Board acted correctly when it denied the Advocacy Team's request for a hearing on the Regional Board's 2005 CAO at this time. Such a hearing by the State Water Board on the 2005 CAO before the end of 2006 is not only premature, but potentially unnecessary, and, contrary to the Advocacy Team's assertions, would take much longer than a single day.

III. The Legal Authority of the Office of Chief Counsel and the Executive Director to Act as the State Water Board in Adjudicatory Proceedings Needs To Be Clarified Before Further State Water Board Proceedings In This Matter

As noted above, since the June 28, 2006 State Water Board decision to deny the Advocacy Team's request for an adjudicatory hearing on its 2005 CAO, neither the Regional Board nor the Advocacy Team have taken any further action. Nor has the State Water Board taken any action on its own motion. Thus, until receipt of Ms. O'Haire's July 14, 2006 letter, Petitioners were awaiting further action by the Regional Board, which would be subject to review under Water Code § 13320, and/or action by the State Water Board itself. Accordingly, it is unclear under what authority Ms. O'Haire purports to act as she has in her July 14, 2006 letter.

Further, in her July 14, 2006 letter, Ms O'Haire states that "[f]ollowing submittal of complete petitions and responses to the petitions, or as circumstances warrant, the Executive Director will determine what additional steps the State Water Board will take regarding this matter. Petitioners' Amended Joint Petition filed on May 26, 2006, as subsequently amended on June 6 and 23, 2006, was directed to the State Water Board, sitting in its adjudicatory capacity as the statutorily designated body under Water Code § 13320 to which aggrieved persons are directed to petition for review of regional board actions.

Petitioners are not aware of any authority which authorizes either the Office of Chief Counsel or the Executive Director of the State Water Board to substitute themselves as the decision makers in adjudicatory proceedings pending before the State Water Board. Specifically, State Water Board Resolutions 99-048 and 2002-0104, regarding delegation of authority to the Executive Director, do not include the delegation of any of the State Water Board's adjudicatory functions under Water Code section 13320. Accordingly, if the State Board now intends to proceed with the 2005 CAO, Petitioners ask that the Executive Director and Office of Chief Counsel clarify their authority to step into the shoes of, and act and speak for the State Water Board in this pending adjudicatory proceeding before requiring any further response by Petitioners to Ms. O'Haire's July 14th letter.

IV. If the State Water Board Intends To Now Proceed As Set Forth In Ms. O'Haire's July 14th Letter, Responses to Petitioners' Pending Information Requests of the State Water Board Are Necessary Before Petitioners Can Fully Respond to The Request for Further Information Regarding The Amended Petitions

In letters dated May 26, June 2, and June 23, 2006, Petitioners made three specific requests of the State Water Board upon which no action has been taken as of the date of this letter. In addition, two new issues have recently come to Petitioners' attention which also require immediate clarification.

First, Petitioners requested that the State Water Board, sitting in its adjudicatory capacity, "direct the Executive Officer of the Regional Board to prepare the administrative record." Obviously, the preparation of this record and an opportunity to review it are critical to Petitioners and their ability to prepare a full response to Ms. O'Haire's July 14, 2006 Letter.

Second, Petitioners requested that the State Water Board, sitting in its adjudicatory capacity, require the Executive Officer of the Regional Board to include in that record:

> a separate compilation of all communications between, on the one hand, the members of the 2005 CAO "Advocacy Team" as designated on October 17, 2005, by the Chair of the Regional Board and, on the other, the members of the Regional Board, its "Advisory Team" for the 2005 CAO, and third-parties regarding Petitioners since June 6, 2002, commencing with the issuance by the Regional Board of CAO R8-2002-0051.

(Petitioners' May 26th Letter, at 2; June 2nd Letter, at 5, and June 23rd Letter, at 5.) Specifically, Petitioners seek all communications between and among the various members of the Office of Chief Counsel who have been assigned one or more advisory or prosecutory roles in connection with the identified ongoing perchlorate proceedings. The Advocacy Team previously produced a limited number of documents and e-mails regarding staff communications with members of the Regional Board and staff communications with third parties. When questioned, Jorge Leon, counsel to the Regional Board and member of the Advocacy Team, advised counsel for Petitioners that communications among and between members of the Regional Board's Advisory Team, on the one hand, and the Advocacy Team, who are also employees of the Office of Chief Counsel, on the other, had not been produced. Thus, Petitioners once again renew this request in order to determine whether the APA and rules governing due process in administrative adjudicatory proceedings have been and will continue to be complied with as this matter proceeds before the State Water Board.

Third, Petitioners requested that the State Water Board, sitting in its adjudicatory capacity, direct:

> its Office of Chief Counsel to demonstrate that its employees assigned to advise the Regional Board and State Board have at all pertinent times kept their advisory and prosecutory and investigatory roles separate within the Office of Chief Counsel in connection with the following orders and complaints issued by the Regional Board's Executive Officer and related appeals to the State Board: CAO R8-2002-0051, dated June 6, 2002; Water Code Section 13267 order issued to Emhart, dated October 23, 2002; Resolution R8-2003-0070, dated May 16, 2003; ACL Complaint R8-2003-0096, dated October 23, 2003; and the 2005 CAO.

(*Id.*, at 3,5, and 5.) Petitioners once again renew this request in order to determine whether the APA and rules governing due process in administrative adjudicatory proceedings have been and will continue to be complied with as this matter proceeds before the State Water Board itself.

Fourth, during their review of the multiple proceedings between Emhart and the Regional Board over the last four years, Petitioners recently discovered a memorandum apparently authored by Ms. O'Haire dated June 27, 2003, which suggests that she has prejudged the issues against Petitioners framed in the 2005 CAO ("O'Haire Memorandum"). The O'Haire Memorandum, under the signature of then Chief Counsel Craig Wilson, advised the Executive Director of the State Water Board to deny Emhart's petition to the State Water Board (SWRCB/OCC No. A-1527). That petition sought to overturn an order of the Regional Board to compel Emhart to perform extensive investigative work under its purported authority pursuant to Water Code § 13267 without any hearing. (A copy of the O'Haire Memorandum is attached hereto as Exhibit A.)[3]

Two days later on June 29, 2003, on the basis of the O'Haire Memorandum, the Executive Director of the State Water Board advised Emhart that its petition had been denied because it assertedly failed to raise any substantial issues appropriate for review by the State Water Board. As is fully set forth in Petitioners' Amended Joint Petition for Review-Part B (Supporting Papers), at page 18 through 22, on November 8, 2004, the Riverside County Superior Court found that the Regional Board's action was unconstitutional and ordered the Regional Board to rescind its Water Code § 13267 order directed at Emhart.

Petitioners address the O'Haire Memorandum at this time because it advises the Executive Director that its author determined in 2003 that Emhart's petition did not raise significant issues of fact or law appropriate for State Water Board review because the "facts" assertedly establish that Emhart is liable as a "successor" for the actions of the West Coast Loading Corporation ("WCLC") and that WCLC discharged perchlorate to the groundwater in the Rialto/Colton Groundwater Basin, the very issues now framed by the 2005 CAO. Specifically, the O'Haire Memorandum "found" with regard to the alleged discharge and corporate successor issues that:

> Based on the evidence in the record it [sic], a reasonable person would suspect that WCLC discharged perchlorate waste at the site and or the storage bunkers in north Rialto that could affect the waters of the state and a Water Code section 13267 directive is appropriate.
>
> * * *

---

[3] The O'Haire Memorandum was attached to a declaration of Kurt Berchtold dated October 7, 2003, filed by the Attorney General's office in the Riverside County Superior Court in the then pending action entitled *Emhart Industries, Inc. v. The Santa Ana Regional Board, et al.*, Case No. 397528.

> Since Petitioners' predecessor, AHC, assumed all liabilities and continued the business and benefited from KLI's goodwill, AHC assumed all liabilities including those of environmental harm of KLI and WCLC. Since Petitioners later merged with AHC, Petitioners are appropriately named in the Water Code section 13267 directive issued by the Regional Board.

(Exhibit A, hereto, at 3-4.) Extraordinarily, the author of the O'Haire Memorandum made these "factual determinations" without any opportunity for Emhart to have adjudicated at an evidentiary hearing the allegations in the 13267 order with the presentation of evidence, argument, and citation to authority. Indeed, as noted above, the Riverside County Superior Court subsequently rejected these actions of the Office of Chief Counsel, the State Board's Executive Director, and the Regional Board as unconstitutional.

The "factual determinations" made by the Office of Chief Counsel (apparently authored by Ms. O'Haire) and accepted by the Executive Director suggest that they have prejudged the very issues against Emhart which are again now before the State Water Board. Accordingly, Petitioners also request that the Office of Chief Counsel advise Petitioners whether Ms. O'Haire authored or participated in the preparation of the O'Haire Memorandum. If not, who in the Office of Chief Counsel did, are they still there, and what interaction have they had with the Executive Director and the members of the State Water Board regarding these maters since they were first brought to the State Water Board's attention in the Fall of 2002.

If Ms. O'Haire was the author or participated in its preparation, Petitioners request that the Office of Chief counsel advise whether she will now be disqualified from further advising the Executive Director and/or State Water Board in connection with these ongoing matters. If she was its author or participated in its preparation, Petitioners also request that the Office of Chief Counsel clarify what role and interaction Ms. O'Haire has had with the Executive Director and the members of the State Water Board themselves in connection with their decisions on Petitioners' and the Advocacy Team's various requests since May 26, 2006.

Finally, as noted in Petitioners' (Updated as of 6/2/06) Amended Joint Petition for Review-Part B (Supporting Papers), at pages 13 and 14, in September 2002, the Regional Board's Executive Officer appeared to be in regular *ex parte* communication with State Water Board Member Peter Silva regarding the Regional Board's adjudication of the original CAO issued to Kwikset Corporation. Specifically, on September 18, 2002, Mr. Thibeault advised Carole Beswick, Chairperson of the Regional Board and Board member Fred Ameri by e-mail as follows with regard to a telephone conversation Mr. Thibeault had with then State Water Board member Peter Silva regarding the September 13, 2002 adjudicatory hearing before the Regional Board, which resulted in the Board's decision to rescind the 2002 CAO because the Board's staff failed to prove its case:

> Mr. Thibeault: Carole and Fred, Just received a call from State Board Member Pete Silva. You will recall that he was at the hearing last Friday, but left before the end. He called to find out what happened.
>
> He said that [Senator] Nell [Soto's] son called him and told him that Nell had gone ballistic when she heard what happened. Pete said that he will be trying to do some of what he called "damage control" with her. He said that he wouldn't be surprised that we will have Senate hearing being scheduled. . . .
>
> I explained to Pete about the concerns of the Board, both with respect to the Kwikset Corporate veil, and with the well-founded thought that we would spend the next two years fighting Kwikset and Goodrich at the State Board and in court, if the Order was upheld, instead of making any progress and getting wells in the ground. Told him that the Board felt that it would be better to bring more of the PRPs into the investigation process.
>
> Pete seemed to understand [what] the decision was all about. He just seemed to dread baving to deal with Nell, when she called him.

(Ex. 52.)

While Petitioners understand that Mr. Silva is no longer a member of the State Water Board, the above e-mail exchange suggests that there was in 2002, and thus there may have been since that time, direct *ex parte* communications between members of the Regional Board's Advocacy Teams, and/or members of the Regional Board with members of the State Water Board and/or the Executive Director of the State Water Board regarding Petitioners and these ongoing proceedings. Accordingly, Petitioners also request that the Office of Chief Counsel determine whether any such direct *ex parte* communications (by e-mail, in writing, or orally) have occurred with and among any of the current and former members of the State Water Board and/or the Executive Director. If any documentary evidence of such communications still exists, Petitioners request that it be preserved and that Petitioners be provided copies of those documents.

As the State Water Board is aware, this information is critical to the analysis by the State Water Board, Petitioners, and potentially the courts of the separation of functions, potential bias, and due process issues set forth in the State Water Board's regulations, the APA, *Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, *Quintero v. City of Santa Ana et al.* (2003) 114 Cal.App.4th 810, and most recently in *Morongo Board of Mission Indians v. State Water Resources Control Board*, Sacramento County Superior Court, Case No. 04CS00535.

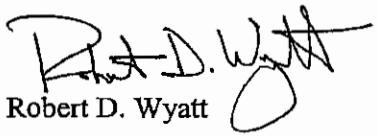
V. Conclusion

For all the foregoing reasons, the State Water Board should direct its Executive Officer and Office of Chief Counsel to take no further action pending the completion of the investigation of the 160-acre site, a determination by Regional Board staff that a condition exists on that site which requires remediation, a determination that one or more suspected dischargers, which includes Emhart, are responsible (in part or in whole) for those conditions, and, having been approached, have refused to address those conditions, and the Regional Board thereafter has taken an action which is subject to review by the State Water Board under Water Code section 13320.

If the State Water Board takes such action, the requests regarding the significant procedural issues set forth in Section III, above, would be rendered moot and thus Petitioners would be prepared to withdraw them without prejudice to their renewal at a future date if necessary.

If the State Water Board elects to now proceed as outlined in Ms. O'Haire's July 14th letter, Petitioners request that the dates set therein not be triggered until the information requested in Section IV, above, has been provided to Petitioners.

Very truly yours,



Robert D. Wyatt

RDW:wl

CC: Karen A. O'Haire, Esq.
Elizabeth Miller Jennings, Esq.
Scott A. Sommer, Esq.
Gerard J. Thibeault

Winston H. Hickox
Secretary for Environmental Protection

State Water Resources Control Board

Office of Chief Counsel
1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 • FAX (916) 341-5199 • www.swrcb.ca.gov

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov.

TO: Celeste Cantú
Executive Director

FROM: Craig M. Wilson
Chief Counsel
OFFICE OF CHIEF COUNSEL

DATE: JUN 27 2003

SUBJECT: PETITION OF EMHART INDUSTRIES, INC.; B&D, INC. (TECHNICAL REPORT ORDER FOR PERCHLORATE INVESTIGATION, CITY OF RIALTO) SANTA ANA REGION: PROPOSED DISMISSAL
SWRCB/OCC FILE A-1527

BACKGROUND

Perchlorate has been detected in municipal supply wells in the Rialto, Colton, and Chino Groundwater basins in San Bernardino County. Perchlorate was first detected in the groundwater in 1997. At that time the California Department of Health Services (DHS) action level (AL) was 18ppb. Two water supply wells had levels exceeding 18 ppb and were shut down. In January 2002, DHS lowered the AL to 4 ppb. In response to this AL the water purveyors in the area restricted or eliminated the use of additional production wells with perchlorate concentrations that exceeded 4 ppb.

Between 1997 and the present, various suspected perchlorate dischargers were identified. One suspected discharger is the former West Coast Loading Corporation (WCLC) that stored and dried perchlorate at its former facility. Water supply wells with perchlorate contamination are located downgradient from this facility and WCLC's storage bunkers. The Santa Ana Regional Water Quality Control Board (Regional Board) received information that Emhart Industries, Inc. and Black & Decker, Inc. (B&D), Inc., were successor companies to WCLC. The Regional Board's Executive Officer issued a directive pursuant to Water Code section 13267 requiring Emhart Industries, Inc. and B&D, Inc. to conduct an investigation to define the horizontal and vertical extent of perchlorate in the soil and groundwater in the vicinity of the former WCLC facility and former bunker area that was owned, leased, managed, and/or used by WCLC.

Emhart Industries, Inc. and B&D, Inc. (Petitioners) filed a timely petition requesting review of the Regional Board's Water Code section 13267 directive requiring the Petitioners to develop

EXHIBIT A

and submit a workplan and conduct soil and groundwater investigation for perchlorate in the vicinity of the WCLC facility. The Petitioners also filed a request for a stay that was dismissed on December 18, 2002.

ISSUE

Does the petition present issues that merit consideration of the State Water Resources Control Board (State Board)?

DISCUSSION

No. A review of the petition and administrative record indicate that the Regional Board did not err in issuing a Water Code section 13267 directive to Petitioners. The petition does not raise substantial issues appropriate for State Board review.

Contention No. 1: There is no basis for a reasonable person to suspect that WCLC discharged perchlorate to the waters of the state and a Water Code section 13267 directive is not appropriate.

Finding: Petitioners allege that the evidence relied on by the Regional Board to issue the Water Code section 13267 directive is devoid of facts and does not establish that WCLC is suspected of discharging perchlorate waste where it could affect the waters of the state. The record does not support this allegation.

The record indicates that tens of thousands of pounds of perchlorate were stored, processed, and used in manufacturing at the WCLC site. WCLC records show that in 1956 and 1957, 47,000 lbs. and 43,250 lbs. of perchlorate, respectively, were on site to be screened and dried. Further, several thousand pounds of perchlorate were used in manufacture of photoflash and whistle cartridges, and projectile simulators. In addition, water was used in the testing of perchlorate-containing products manufactured on site and wet mops were used for cleaning areas where perchlorate was used. Receipts to WCLC from the rental of storage bunkers indicate that material from WCLC was stored in the bunkers. Since perchlorate was used, stored, and processed at WCLC's site, it is reasonable to conclude, without evidence to the contrary, that perchlorate or products containing perchlorate were also stored in the storage bunkers.

Although the record indicates that there have been no soil or groundwater investigations conducted at the site, there have been several groundwater investigations conducted at a site 2000 feet to the southwest. These reports and USGS reports for the Rialto-Colton basin indicate groundwater flow is southeast. In addition, the unconsolidated quaternary alluvial sediments in the basin are conducive to water infiltration. Maximum perchlorate concentrations in municipal

supply wells downgradient of the site range from 5 ppb to 820 ppb, with the highest readings in the wells closest to the site.

The State Board's Division of Water Quality technical review concluded that the administrative record contains evidence that: WCLC stored, processed and used perchlorate at the former WCLC site and storage bunkers, perchlorate waste at the site could have been disposed into soil or groundwater, and perchlorate has been detected in water supply wells downgradient of the site.

Water Code section 13267(b) states that a regional board may require a person who is suspected of having discharged waste that could affect the waters of the state furnish a technical or monitoring report. Based on the evidence in the record it, a reasonable person would suspect that WCLC discharged perchlorate waste at the site and or the storage bunkers in north Rialto that could affect the waters of the state and a Water Code section 13267 directive is appropriate.

Contention No. 2: The Petitioners contend neither Emhart Industries, Inc. nor B&D, Inc. is subject to successor liability for the alleged discharges to the waters of the state by WCLC and should not have been issued a Water Code section 13267 directive.

Finding: Evidence in the record reveals the following corporate history. WCLC was incorporated in 1952. In 1957, WCLC merged into Kwikset Locks, Inc., (KLI). Petitioners do not dispute that the merger resulted in KLI becoming responsible for WCLC's legal obligations. While the merger was occurring, the American Hardware Corporation (AHC) purchased the stock and assets of KLI. KLI continued to operate as a subsidiary of AHC until KLI was dissolved June 30, 1958. Petitioners state that following the dissolution of KLI, AHC went through various corporate transactions that in 1976 left it as Emhart Industries Inc. In 1989, B&D Inc. merged into EmhartCorp/Va., which merged into Emhart Industries, Inc.

Petitioners allege that neither Emhart Inc. nor B&D, Inc. is obligated to respond to the Water Code section 13267 directive because there is a general legal rule that a shareholder of a dissolved corporation is not liable for the corporation's debts and responsibilities after its dissolution and thus AHC is not liable for KLI's environmental harms. Petitioners fail to note that there is considerable case law that supports successor liability where a corporation acquires another corporation. Specifically, a corporation assumes all liabilities, including environmental liability, of another corporation where the acquiring corporation expressly assumes all liabilities or continues the acquired corporation's business and benefits from its goodwill.

The evidence shows that when Petitioners' predecessor, AHC, acquired KLI, it assumed all of WCLC's and KLI's liabilities pursuant to a written agreement. While Petitioners have not produced the purchase agreement between AHC and KLI, the dissolution certificate states that AHC "assumes all of the debts and obligations of said corporation remaining unpaid as of June 30, 1958," said corporation being KLI.

AHC also continued the acquired corporation's business and benefited from its goodwill. Evidence in the record shows that AHC continued to produce and sell products under the Kwikset, KLI's product name. AHC paid for the purchase with shares of its own stock establishing continuity of shareholders. KLI dissolved within a year after AHC acquired its stock meeting a test that the acquired corporation must dissolve as soon as practicable. Lastly, AHC assumed the necessary obligations from KLI for the uninterrupted continuation of business.

Since Petitioners' predecessor, AHC, assumed all liabilities and continued the business and benefited from KLI's goodwill, AHC assumed all liabilities including those of environmental harm of KLI and WCLC. Since petitioners later merged with AHC, Petitioners are appropriately named in the Water Code section 13267 directive issued by the Regional Board.

CONCLUSION

The petition in this matter fails to raise substantial issues appropriate for review by the State Board and should be dismissed. Accordingly, attached for your signature is a letter to the Petitioner dismissing the petition. If you have any questions about this matter, please contact Karen O'Haire of my staff at 341-5179.

Attachment

bc: Betsy Jennings, OCC

KOHaire/dwhite
6/24/03
I:\whild\2-koh\a1527 [emhart industries]\a1527 [emhart industries] dismissal memo .doc

ATTACHMENT 5

State Water Resources Control Board

Linda S. Adams
Secretary for Environmental Protection

Office of Chief Counsel
1001 I Street, 22nd Floor, Sacramento, California 95814
P.O. Box 100, Sacramento, California 95812-0100
(916) 341-5161 ♦ FAX (916) 341-5199 ♦ http://www.waterboards.ca.gov

Arnold Schwarzenegger
Governor

September 15, 2006

VIA U.S. MAIL & EMAIL

Mr. Robert D. Wyatt
rwyatt@allenmatkins.com
Allen Matkins Leck Gamble Mallory & Natsis LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Dear Mr. Wyatt:

PETITIONS OF KWIKSET LOCKS, INC., KWIKSET CORPORATION, EMHART INDUSTRIES, INC., BLACK & DECKER, INC. AND BLACK & DECKER (U.S.), INC. (AMENDED CLEANUP AND ABATEMENT ORDER NO. R8-2005-0053 FOR KWIKSET LOCKS, ET AL.), SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD: REQUEST FOR ACTIVE PETITIONS TO BE PLACED IN ABEYANCE

SWRCB/OCC FILES A-1732, A-1732(a) and A-1732(b)-(d)(Consolidated)

In your letter dated August 2, 2006, you requested the State Water Resources Control Board (State Water Board) to change your petitions from active status to abeyance for an unspecified period of time. No parties have objected to the petitions being placed in abeyance. We are happy to place the petitions in abeyance in hopes that the matter may be worked out between you and the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board). However, we will hold the matter in abeyance for no more than two years from the date of this letter. If, by that time, no resolution of the matter has taken place or the matter has not become the subject of an active dispute, the petition will be dismissed without prejudice.

Please note the significance of the phrase "without prejudice." If, after the petition is dismissed, an actual dispute arises between you and the Regional Water Board over the interpretation or enforcement of the underlying order, you may file a new petition with the State Water Board within 30 days of the date of the dispute. Any issues relevant to that dispute, including but not limited to those raised in this petition, will be considered at that time in the same manner as if the petition were filed for the first time.

In addition, based on the e-mails copied to all the parties, I am aware that the Santa Ana Water Board is considering an alternative approach for issuing cleanup and abatement orders for the Colton/Rialto perchlorate plume. Placing these petitions in abeyance should not be construed in any manner as approving or endorsing the propriety of the alternative proposed in Mr. Cobb's e-mail to the parties.

If petitions are filed on any future Santa Ana Water Board actions resulting from this or other procedures, the State Board will review the actions pursuant to Water Code Section 13320.

If you have any questions, please contact me at (916) 341-5175.

Sincerely,

Elizabeth Jennings Staff Counsel IV

cc: Ms. Lorraine M. Sedlak
Director, Health, Safety and Environmental
Kwikset Corporation
19701 Da Vinci
Lake Forest, CA 92610

James L. Meeder, Esq. **[via U.S. mail & email]**
jmeeder@allenmatkins.com
Allen Matkins Leck Gamble & Mallory LLP
Three Embarcadero Center, 12th Floor
San Francisco, CA 94111-4074

Scott Sommer. Esq. **[via U.S. mail & email]**
scott.sommer@pillsburylaw.com
Pillsbury Winthrop Shaw Pittman LLP
50 Fremont Street
PO Box 7880
San Francisco, CA 94120-7880

Steven Elie, Esq. **[via U.S. mail & email]**
s.elie@mpglaw.com **[BAD ADDRESS]**
Musick, Peeler & Garrett
One Wilshire Boulevard
Los Angeles, CA 90014-3383

Mr. Kurt Berchtold **[via email only]**
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Ms. Linda H. Biagioni
Vice President, Emhart Industries, Inc.
Vice President for Environmental
Affairs, Black & Decker Corporation
701 East Joppa Road
Towson, MD 21286

Peter R. Duchesneau, Esq.
pduchesneau@manatt.com **[via U.S. mail & email]**
Manatt, Phelps & Phillips, LLP
11355 W. Olympic Boulevard
Los Angeles, CA 90064

Christian M. Carrigan, Esq. **[via U.S. mail & email]**
ccarrigan@mmblaw.com
Morgan Miller Blair
1676 N California Blvd #200
Walnut Creek, CA 94596-7462

Danielle Sakai, Esq. **[via U.S. mail & email]**
d.g.sakai@bbklaw.com
Best, Best & Kreiger
3750 University Avenue
Riverside, CA 92501

Mr. Gerard Thibeault **[via email only]**
Executive Officer
Santa Ana Regional Water Quality
Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3339

Continued next page

cc: Mr. Jorge León **[via email only]**
Senior Staff Counsel
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Ted Cobb, Esq. **[via email only]**
Office of Chief Counsel
State Water Resources Control Board
1001 I Street, 22nd Floor [95814]
P.O. Box 100
Sacramento, CA 95812-0100

Interested Parties List